they may entirely bar recovery. *Farnsworth* v. *Garrard*, 1 Campb. 38. But lack of benefit to the defendant is not a defense, unless due to fault of the plaintiff. See *Edington* v. *Pickle*, 1 Sneed (Tenn.) 122, 127. Thus it appears that other important considerations would often be omitted, if the amount of the defendant's enrichment were used as the sole measure of damages. But see *Farnsworth* v. *Garrard*, *supra*. Where the plaintiff is not at fault, the great weight of American authority looks rather to the services rendered and the materials furnished, than to the benefit received by the defendant. Such is the rule if the defendant prevents performance of the contract. *Mooney* v. *York Iron Co.*, 82 Mich. 263. The same rule applies if work is done on express request. *Stowe* v. *Buttrick*, 125 Mass. 449. But see *Van Deusen* v. *Blum*, 35 Mass. 229. If the contract fails owing to mutual mistake, or lack of mutual assent, the request is implied. *Buck* v. *Pond*, 126 Wis. 382. In the principal case, the fact that the defendant was enriched less than he might have been was due to his own fault, and should not affect the plaintiff's recovery.

Restrictions and Restrictive Agreements as to Use of Property — Covenantor's Liability upon Re-entry after Breach of Covenant by Lessee. — The defendant on buying an estate covenanted with the vendor, for himself and his assigns, to erect no other than private residences. He then granted a lease, taking covenants similar to his own. The lessees erected a building in violation of the covenant. They then became bankrupt, and upon their trustee's disclaimer of the lease the defendant re-entered. The rest of the vendor's estate with the benefit of the covenants was thereafter sold to the plaintiff. *Held*, that the plaintiff is not entitled to a mandatory decree to compel the removal of the building. *Powell* v. *Hemsley*, [1909] 2 Ch. 252.

The principal case seems to misunderstand the true grounds for equitable relief by way of mandatory decree. Such relief is granted on the theory that only by specific reparation can equity be done, when there has been a breach of such a covenant as would ordinarily allow specific performance. *Tucker* v. *Howard*, 128 Mass. 361. Specific reparation seems to connote a wrong already done, and the decree orders that the wrong be undone. *Atty.-General* v. *Algonquin Club*, 153 Mass. 447. And whether the plaintiff has suffered damage is immaterial. *Lord Manners* v. *Johnson*, 1 Ch. D. 673. See *Lloyd* v. *London, etc., Ry. Co.*, 2 DeG., J. & Sm. 568. The relief is granted on the ground that the defendant has broken his covenant, and must not be allowed unjustly to be enriched thereby. In equity the burden of such restrictive covenants binds all purchasers with notice. *Tulk* v. *Moxhay*, 2 Phillips 774. In the principal case, the defendant had notice of the restrictions and of his lessee's breach. Consequently when he acquired the latter's interest, he got no right to retain the benefit of the building wrongly erected. See *Bird* v. *Hall*, 30 Mich. 374; *Gaskin* v. *Balls*, 13 Ch. D. 324. The discussion by the court as to whether or not there was a continuing breach seems irrelevant, and it is submitted that the refusal of relief merely because the breach was completed before the purchase by the defendant was erroneous.

Sales — Breach of Warranty — Buyer's Remedies Mutually Exclusive. — The plaintiff sued for the purchase price of a harvesting machine. The defendant filed a counterclaim to recover, as having rescinded the contract, freight charges paid as part of the purchase price, and also consequential damages resulting from breach of warranty. The court instructed that in case of a preponderance of evidence in his favor, the defendant might recover both items so claimed. *Held*, that such an instruction is error. *Houser & Haines Mfg. Co.* v. *McKay*, 101 Pac. 894 (Wash.). See Notes, p. 141.

Sales — Conditional Sales — Risk of Loss. — The plaintiff sold to the defendant a cash register, retaining title thereto as security for the payment of

the purchase price. After delivery of the register to the buyer, but before the maturity of the note, the register was accidentally destroyed. *Held*, that the plaintiff can recover on the note. *National Cash Register Co.* v. *South Bay Club House Association*, 64 N. Y. Misc. 125 (Sup. Ct.).

The present decision is the first in New York squarely placing the risk of loss in a conditional sale upon the buyer. See *Humeston* v. *Cherry*, 23 Hun (N. Y.) 141. *Contra*, *Wolf* v. *Di Lorenzo*, 21 N. Y. Misc. 521. For a discussion of the principles involved, see 9 HARV. L. REV. 106; 13 *ibid.* 608; 14 *ibid.* 626; 19 *ibid.* 388.

SALES — STOPPAGE IN TRANSITU — BROKEN TRANSIT. — A bought goods of B in the city of M, F. O. B. at M, to be marked "NXZ Adelaide," and sent to C at the city of L, for loading on ships. C was a forwarding agent, and had received orders from A to forward such goods by ship to Adelaide. Before the ship sailed, but after the goods had been loaded on board, A became bankrupt, and B served notice to stop *in transitu*. *Held*, that the notice is effective. *Kemp* v. *Ismay, Imrie & Co.*, 100 L. T. R. 996 (Eng., K. B. D. Mch. 29, 1909). See NOTES, p. 142.

SET-OFF AND COUNTERCLAIM — RECOUPMENT AGAINST CREDITOR'S ASSIGNEE. — A contractor assigned to the plaintiff his claim against the defendant for payment due under two building contracts. After the defendant had notice of the assignment, the assignor failed to complete the buildings. *Held*, that in an action by the plaintiff on the assigned claim, the defendant can recoup for the assignor's default. *American Bridge Co. of New York* v. *City of Boston*, 88 N. E. 1089 (Mass.).

The statutes of set-off do not allow a debtor to set off against his creditor's assignee a debt from the assignor which matured after notice of the assignment. *Watson* v. *Mid Wales Railway Co.*, L. R. 2 C. P. 593. After the ownership of the claim has by notice to the debtor vested in the assignee, a claim maturing against the assignor is no longer a debt from the owner of the principal claim. *Meyers* v. *Davis*, 22 N. Y. 489. *Cf. St. Andrew* v. *Manchaug Mfg. Co.*, 134 Mass. 42. Since counterclaim, too, is a cross action, the same rule is probably applicable. *Spencer* v. *Babcock*, 22 Barb. (N. Y.) 326. The better explanation of the common law remedy of recoupment is that the defendant attacks the plaintiff's cause of action by showing that he has failed in counter performance, wherefore the defendant need not perform his promise, but only compensate the plaintiff for what he has done. See *Mondel* v. *Steel*, 8 M. & W. 858. But see *Dushane* v. *Benedict*, 120 U. S. 630. *Cf. Basten* v. *Butter*, 7 East 479. Under this doctrine the principal case is sound. Against the assignee the debtor may well attack the validity of the contract sued on; for assignment cannot cure inherent weakness. *Ford* v. *White*, 16 Beav. 120.

SURETYSHIP — NATURE OF SURETYSHIP CONTRACT — GUARANTY. — The plaintiff bank agreed to rediscount certain notes made by customers of the defendant bank, in consideration whereof the defendant bank orally agreed to guarantee the payment of the notes at maturity. *Held*, that the plaintiff bank may recover on the promise. *Bank of Pike* v. *People's National Bank*, 118 N. Y. Supp. 641 (Sup. Ct.). See notes p. 136.

TRUSTS — CESTUI'S INTEREST IN THE RES — RIGHT OF CESTUI'S EXECUTOR TO UNEXPENDED INCOME OF SPENDTHRIFT TRUST. — The testatrix left personalty to trustees to apply the income to the support and maintenance of her imbecile nephew and after his death to the trustees absolutely. *Held*, that the unexpended income goes to the trustees, and not to the *cestui's* administrator. *Ross's Estate*, 66 Leg. Int. 562 (Pa., Dist. Ct.).

At common law accumulated income became a part of the principal of the